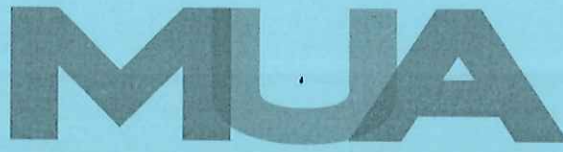


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UNDERGRADUATE UNIVERSITY EXAMINATIONS

SCHOOL OF MANAGEMENT AND LEADERSHIP

DEGREE OF BACHELOR OF MANAGEMENT AND LEADERSHIP/BACHELOR  
OF COMMERCE

HRM 402/ HRM 321:      LABOUR LAW

DATE:                      4<sup>TH</sup> DECEMBER 2017

DURATION:    2 HOURS

MAXIMUM MARKS: 70

INSTRUCTIONS:

1. Write your registration number on the answer booklet.
2. **DO NOT** write on this question paper.
3. This paper contains **SIX (6)** questions.
4. Question **ONE** is compulsory.
5. Answer any other **THREE** questions.
6. Question **ONE** carries **25 MARKS** and the rest carry **15 MARKS** each.
7. Write all your answers in the Examination answer booklet provided.

**QUESTION ONE**

**Read the Case Study below carefully and answer the questions that follow:**

Harry works in an international development business named IDO Ltd. He performed his job interview in Kenya, where IDO Ltd's headquarters are located. He works six months a year in Kenya, and six months a year in Uganda on field work. His contract of employment states in clause 36 that it is governed by the law of Uganda. Unfortunately, after two and a half years' work, his relationship with a supervisor has soured and he wishes to bring a constructive dismissal claim. It is only then that he reads clause 36, and is concerned because he does not understand Ugandan law.

Jane also works at the IDO Ltd office in Kenya, but she is hired through an employment agency named Office Managers Ltd. Her contract, in clause 4, states the following: 'The contractor agrees to take the status of being a self-employed independent contractor, and not a worker. The contractor may provide a suitably qualified substitute for work. Jane has not taken any holiday this year, and her requests are refused by the manager of Office Managers Ltd. At the end of the year, Office Managers Ltd falls into insolvency, and Jane loses her job at IDO Ltd. Jane thinks she should be entitled to pay in lieu of taking holidays.

Justine works directly for IDO Ltd under a permanent contract of employment. Clause 13 states, 'the management has the discretion to vary the contract in any way it sees as fit, including the rate of pay.' IDO Ltd writes to Justine informing her that this year her pay will have to be cut by ten per cent. Justine wants to object.

**Required:**

- i) Advise Harry, Jane and Justine of any potential claims they may have against IDO Limited. (9 marks)
- ii) Explain the distinction between;
  - a. Summary dismissal and constructive dismissal (2 marks)
  - b. independent contractor and employee (2 marks)



- iii) Discuss the relevance of the Labour Court in securing the just, effective and expeditious resolution of disputes and unfair labour practices. (6 marks)
- iv) Outline any THREE prerequisites for an employer to be held vicariously liable for the acts of an employee. (6 marks)

## QUESTION TWO

Josh works for a popular local newspaper, the MacBridge News, as one of its leading journalists. Currently there is no trade union recognized in his workplace. He is interested in organizing his workplace because he believes that the terms and conditions of his colleagues' work could be fairer. He seeks your advice on the following points:

- (a) What are the requirements for registration of a trade union? (5 Marks)
- (b) What grounds can the Registrar invoke to cancel or suspend the registration of a trade union? (5 marks)
- (c) What are the advantages for employees who decide to become members of the trade union? (5 marks)

## QUESTION THREE

- a) "The identification of the essentials of a contract of employment is a controversial matter because there is no unanimity in regard to the basic features of this contract." F. van Jaarsveld et al, Principles of Labour Law (2002) 2<sup>nd</sup> ed. Butterworth's pg.48.

In light of the above statement discuss the basic elements of a contract of employment. (10 Marks)

- b) Discuss remedies available to the employer on a breach of the employment contract by employees. (5 Marks)

## QUESTION FOUR

- i) John recently qualified as an electrician and decided to open his own business, called "WeFixAll Agencies". Since he is the only qualified electrician in the

Mlango Kubwa area, he soon had to expand and employed three workers as his assistants. John requires you to advise him about the following:

- a. Three duties of WeFixAll Agencies in terms of the Occupational Safety and Health Act, 2007. Explain in detail. (3 Marks)
  - b. Two duties of WeFixAll Agencies in terms of the Work Injury Benefits Act 30 in the event of an accident at the workplace. Explain briefly. (2 Marks)
  - c. Protection granted to wages or salaries of an employee under the Employment Act 2007. (4 Marks)
- ii) Discuss any three primary sources of labour law. (6 Marks)

#### QUESTION FIVE

Write short notes on ANY THREE of the following;

- a) Collective Bargaining Agreement (5 Marks)
- b) Fair and Unfair termination (5 Marks)
- c) Discrimination in employment (5 Marks)
- d) Certificate of Service (5 Marks)

#### QUESTION SIX

- i) The Nairobi Civil Servants Workers Union (NACSWU) is seeking a salary increase of 16% for all employees employed by the Nairobi Broadcasting Corporation (NBC). NBC is prepared to offer an 8% increase. The parties have reached a deadlock and a dispute is declared.

**Required:**

- a) Name and define the type of dispute between the parties. (2 Marks)
- b) NACSWU intends to call out a strike action. Advise the officials of NACSWU of all the legal requirements that have to be met before the workers could actually go on strike. (4 Marks)
- c) The workers would like to know whether they are entitled to any payment during the period that they are on strike. (1 Marks)



- ii) Nairobi Broadcasting Corporation (NBC) is considering terminating several of its employees on account of redundancy. Discuss any four conditions which NBC must fulfil before declaring the redundancy. (8 Marks)

